

Internal Affairs Complaint # 2012 - 002

Nature of Complaint:

SOP 101 Command Protocol III. G. 2 Requirements To Obey Lawful Orders

SOP 114 Rules Of Conduct IV. 17 Insubordination

SOP 114 Rules Of Conduct IV. 58 Cowardice

Member Involved: Officer Andy Levesque

Incident Date: July 31, 2012

Investigated By: Thomas A. Mattmuller, Patrol Captain

Date: August 28, 2012

Background

The Venice Police Department Internal Affairs Complaint 2012 – 002 forwarded to Chief McNulty from Lieutenant Hill on July 31, 2012 is assigned to Captain Mattmuller for investigation.

On July 31, 2012 Officer Whittaker and Officer Palmieri were investigating a disturbance at Motel 6. A person involved in the disturbance was confirmed to have an active warrant. As the person was placed under arrest, he actively resisted. Officer Palmieri made the radio transmission for 10-94 in an (obvious tone of urgency.) Officer Barlow, Officer Woodworth, and Officer Scurek responded. Officer Guinart and Lieutenant Hill were unable to respond, as they were detaining a sexual battery suspect.

(Officer Levesque remained at Perkins Restaurant, continuing with his dinner break. An ambulance was called to the scene to treat the person taken into custody.) Officer Palmieri notified Lieutenant Hill of the injury to his hand and that he would be driving himself to the hospital. Lieutenant Hill requested an Officer respond to his location and assist Officer Guinart with the detained sexual battery subject. After a few minutes, Officer Scurek responded from the Motel 6 to Officer Guinart. (Officer Levesque remained at Perkins Restaurant, continuing with his dinner break.)

Lieutenant Hill was notified by Officers and the Dispatcher on duty that Officer Levesque remained at Perkins, failing to respond to an Officer's call for help. Lieutenant Hill reviewed the incident and also determined that his radio call for an Officer to backup Officer Guinart was also ignored by Officer Levesque. I responded to the station after receiving notification that Officer Palmieri was injured. I received an incident briefing by Officers and the Dispatcher also to include Officer Levesque's failure to respond.

Investigator's Actions

8/2/2012	Received complaint for investigation
8/2/2012	Notice of Internal Affairs Investigation provided to Officer Levesque
8/2/2012	Reviewed radio, telephone, and CAD transmissions
8/2/2012	Interview Dawn Delarue, Perkins Manager
8/2/2012	Interview Dugan Taylor, Perkins Cook
8/4/2012	Interview Kellie Peyton, Communicator
8/4/2012	Interview Steve Scurek, Officer
8/5/2012	Interview Jake Barlow, Officer
8/5/2012	Interview Dan Whittaker, Officer
8/9/2012	Interview Bret Woodworth, Officer
8/16/2012	Officer Levesque provided with CD of interviews, radio, and telephone calls
8/23/2012	Interview subject Officer, Andy Levesque

Interview with Officer Andy Levesque

Officer Levesque was interviewed 8/23/2012 at 3:11p.m. with FOP representative present. Officer Levesque understood the meaning of 10-94, requesting backup. (He acknowledged hearing the radio call by Officer Palmieri, "need 10-94".) Officer Levesque identified the tone of Officer Palmieri's voice as "a bit excited". Officer Levesque described Officer Barlow and Officer Woodworth as immediately responding by running from the table. Officer Levesque stated he remained at the table, as he was "incapacitated". Officer Levesque did acknowledge hearing the radio transmission by Lieutenant Hill for an Officer to backup Officer Guinart. He was aware that Officer Guinart and Lieutenant Hill were detaining a sexual battery suspect. He did not respond to Lieutenant Hill's transmission. He remained at the table waiting for the food to pass. Officer Levesque acknowledged that he failed to respond to an officer's call for assistance and second call for backup by Lieutenant Hill because of "extenuating circumstances".

Officer Levesque never notified the supervisor of an existing condition preventing him performing his duty. Officer Levesque stated the food passed the lap band and he was then able to respond to Morel 6, approximately 30 minutes. No radio transmissions were indicating that he cleared his break.

Officer Levesque stated at the end of the interview, food was lodged in the band. He experienced pressure, pain and possible purging. He also stated each meal has a possibility of this, with no prediction of lodging or passing of food. He went to the bathroom and attempted unsuccessfully to purge. He returned to the table and sat. He stated, "It was incapacitating, I had pain, it was the most unpleasant thing I had in my life." After paying, Officer Levesque returned to the bathroom and purged. He then responded to Morel 6.

Interview with Dawn Delarue, Perkins Manager

Perkins Manager, Dawn Delarue was interviewed on 8/2/2012 at Perkins. Delarue observed Officers eating and response to the radio call. She observed Officer Woodworth and Officer Barlow run from their table, "new it was an emergency". She observed Officers responding lights and siren from the parking lot. She stated Officer Barlow finished his BLT

and Officer Woodworth was eating a salad. Officer Levesque just received his food and remained at the table eating. She asked what was going on and Officer Levesque responded with, "Officer Palmieri called for backup." Delarue also stated Officer Levesque paid for his meal and left the restaurant.

Interview with Dugan Taylor, Perkins Cook

Dugan Taylor, Perkins Cook, was interviewed on 8/2/2012 at Perkins. Taylor observed Officers during their break and response to the radio call. Taylor heard the radio call and observed Officer Barlow and Officer Woodworth run from their table. He also observed vehicles responding lights and siren. Taylor observed Officer Levesque finishing his dinner and listening to the radio. Officer Levesque stated Officers were responding to an Officer in distress and in need of backup. Taylor observed Officer Levesque pay his bill and walk out of the restaurant in a normal fashion.

Interview with Officer Whittaker

Officer Whittaker was involved in the incident at Motel 6. He stated Officer Levesque arrived on scene after Palmieri drove himself to the hospital, Officer Scurek responded to Lieutenant Hill's request to be relieved, the ambulance departed with arrestee and Officer Barlow, and the female was in custody.

Interview with Officer Scurek

Officer Scurek was interviewed on 8/4/2012. Officer Scurek heard the radio call by Officer Palmieri. Officer Scurek described the call as having a sense of urgency. He responded with lights and siren activated. He assisted with the investigation and eventually returned to Officer Guinart. Officer Levesque was not on scene.

Interview with Officer Woodworth

Officer Woodworth was interviewed on 8/9/2012. He observed Officer Levesque eating chicken fingers and mashed potatoes. He also stated Officer Levesque appeared to be normal, no indication of being sick or making any comments of not feeling well. He recalled the radio call from Officer Palmieri requesting 10-94 which warranted an urgent response. He stated he ran to his vehicle and responded lights and siren along with Officer Barlow. He stated Officer Levesque arrived at Motel 6 after Officer Scurek, the ambulance and Officer Palmieri departed.

Interview with Officer Barlow

Officer Barlow was interviewed on 8/5/2012. Officer Barlow responded to the request of "94" from the Perkins Restaurant by sprinting from the table to his patrol vehicle. Along with Officer Woodworth, they responded with lights and siren activated. Officer Barlow assisted with the investigation and transport of the prisoner to Venice Hospital.

Interview with Dispatcher Peyton

On 8/4/2012 Dispatcher Peyton was interviewed. She was the Dispatcher on duty and recalled the urgent radio call by Officer Palmieri. She also recalled the radio call from Lieutenant Hill for an Officer to backup Officer Guinart. Dispatcher Peyton and Officer Levesque did have a conversation at 03:00. Officer Levesque stated the stomach band was blocked and he could not respond. If he got up, he would be sick.

Evidence

CD of interviews, radio transmissions, and telephone calls

Inconsistencies in Officer Levesque's Interview

During the interview, Officer Levesque stated the lodging of food in the lap band was causing pain and that he was incapacitated. He remained at his seat, the food passed the lap band and he was able to respond.

Officer Levesque stated at the end of the interview, he paid the bill, had just enough time to make it to the bathroom before throwing up.

Delarue and Taylor observed Officer Levesque continue eating after Officer Barlow and Officer Woodworth responded to the 10-94 request.

Dugan Taylor stated Officer Levesque paid his bill and walked out of the restaurant in a normal fashion.

Findings

On July 31, 2012 Officer Palmieri made a radio broadcast for "94". All Officers, including the Dispatcher recognized the transmission to be an urgent call for help. Officer Woodworth and Officer Barlow ran from their dinner break at Perkins and responded with lights and siren activated. Officer Scurek also ran to his vehicle and responded with lights and siren activated. Officer Guinart and Lieutenant Hill were detaining a sexual battery suspect and were unable to respond.

Officer Whittaker and Officer Palmieri actively fought with a person being taken into custody. Officer Palmieri injured his hand and drove himself to the hospital for treatment. The arrested subject was transported to the hospital by ambulance with Officer Barlow escorting. Lieutenant Hill was unable to leave Officer Guinart with the detained sexual battery suspect and could not respond to Motel 6. Lieutenant Hill made a radio transmission for an Officer to backup Officer Guinart. With no response, Lieutenant Hill assumed all Officers were currently busy. Officer Woodworth and Officer Whittaker continued with the investigation at Motel 6 that included a female being taken into custody under the Marchman Act. Officer Scurek returned to Officer Guinart and assisted in coordination of the victim positively identifying the sexual battery suspect leading to an arrest. Lieutenant Hill responded directly from Officer Guinart to the Venice Hospital.

Officer Levesque acknowledged the "94" call from Officer Palmieri. He understood the meaning of 10-94 and urgent tone from Officer Palmieri. He remained at the table as fellow Officers responded. He stated the lap band was blocking food from passing. This condition is unpredictable and causes pain with the potential to vomit. Therefore, he remained at the table waiting for the food to pass. However, two witnesses interviewed stated he remained at the table eating, but monitoring his radio. Officer Levesque also acknowledged hearing the transmission from Lieutenant Hill for an Officer to backup Officer Guinart. He admitted not responding by radio or in person. Officer Levesque cleared from the dinner break with no radio transmission of back in service. Upon his arrival at Motel 6, the scene was secure and the investigation including a Marchman Act, warrant arrest with an arrestee transported to the hospital, and an injured Officer transported to the hospital was complete.

Officer Levesque stated he remained at the table waiting for the food to pass and then responded. He also stated he threw up in the bathroom after paying for his meal. However, witnesses stated he continued eating after fellow Officers responded to the call for "94". Witnesses also stated he left the restaurant after paying in a normal manner.

- Officer Levesque failed to come to the aid of another Officer of the Police Department who was already engaged in an imminently hazardous situation. Officers shall respond to the aid of all persons in danger unless the probability of losing their own life exists. The possibility of vomiting does not rise to a level of losing his life. Therefore, his lack of action is cowardice.
- Officer Levesque acknowledged hearing the call from Lieutenant Hill, but made no response. His lack of action was a refusal to obey a lawful order by a Supervisor.
- Officer Levesque's exhibited unsatisfactory performance by a failure to maintain competency to properly perform his duties and responsibilities.

Count 1 Sustained

Rule Violation:

SOP 101 Command Protocol III. G. 2 Requirements To Obey Lawful Orders

Count 2 Sustained

Rule Violation:

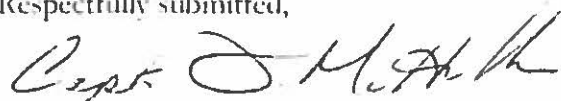
SOP 114 Rules Of Conduct IV. 17 Insubordination

Count 3 Sustained

Rule Violation:

SOP 114 Rules Of Conduct IV. 58 Cowardice

Respectfully submitted,



Captain Thomas A. Mattmuller, Patrol Commander

These actions constitute the following offenses:

You have engaged in activity detrimental to the best interests of the City of Venice, its citizens, supervisors or co-workers.

Personnel Procedures & Rules group one offenses:

- 20. Violation of published city or departmental policies, rules, standards, orders, operating procedures or regulations.
- 24. Any activity detrimental to the city.
- 26. Exhibiting conduct unbecoming a city supervisor or employee.
- 27. Creating or condoning a work environment that is not conducive to the operational aspects or goals and objectives of the city.

Personnel Procedures & Rules group two offenses:

- 14. Insubordination or refusal to perform work assigned or to comply with written or verbal instructions of the supervisor or management.
- 16. Committing actions that affect the safety of equipment or personnel.
- 17. Creating unsafe working conditions.

Venice Police Department Standard Operating Procedures:

- SOP 101 Command Protocol III. G. 2. Requirements to Obey Lawful Orders.
- SOP 114 Rules of Conduct IV. 17. Insubordination
- SOP 114 Rules of Conduct IV. 58. Cowardice

You have the right to representation of your choice at the pre-determination hearing.

CC. Alan Bullock, Director of Administrative Services
Bill Hastings, FOP Staff Representative